

Message

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Sent: 5/16/2018 2:00:18 PM
To: Traylor, Patrick [traylor.patrick@epa.gov]
Subject: EPA's New Source Review Actions in Review



U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
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EPA's New Source Review Actions in Review

Consistent with President Trump's priorities and under Administrator Pruitt's direction, the U.S. Environmental Protection Agency (EPA) is taking steps to clarify, revise, and streamline preconstruction requirements under the New Source Review (NSR) permitting program. EPA's current NSR permitting process has imposed significant costs and regulatory uncertainty, serving as an impediment to or even resulting in the cancellation of projects which would otherwise improve reliability, efficiency, and safety of facilities.

Under the leadership of Administrator Pruitt, EPA is committed to improving the NSR process and, to date, has pursued that goal through the issuance of a number of guidance memoranda that are intended to provide clarity and reduce delay. The long-term goal of EPA's NSR reform and improvement initiative is to have in place permitting requirements that will no longer operate to stifle a company's ability to invest in the latest and greatest technologies or make continued improvements to their operations, all the while protecting the environment as is mandated under the Clean Air Act.

On Wednesday, May 16, 2018 at 10:00 AM, the U.S. House of Representatives Committee on Energy and Commerce will hold a hearing entitled "Legislation Addressing New Source Review Permitting Reform." Given his unique expertise and expansive knowledge of the NSR Program, William Wehrum, Assistant Administrator for the Office of Air and Radiation, U.S. EPA, will testify at Wednesday's hearing.

More information, including a live stream of the hearing, is available at:

<https://energycommerce.house.gov/hearings/legislation-addressing-new-source-review-permitting-reform/>

December 7, 2017. New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability.

Link to memorandum [here](#)

Summary

- ✦ Clarifies that, under the existing regulatory language, so long as a company complies with the procedural requirements for making a preconstruction “projected actual emissions” analysis, then EPA will not come in and “second guess” that analysis.

January 25, 2018. Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.

Link to memorandum [here](#)

Summary

- ✦ Withdraws the 1995 “once-in-always-in” policy that determined that any facility subject to major source hazardous air pollutant (“HAP”) standards must always remain subject to those standards, even if production processes changed or controls were implemented that eliminated or permanently reduced the facility’s potential to emit hazardous pollutants below the applicable 10 tons per year/25 tons per year “major source” thresholds.
- ✦ With the new guidance, which is based on the plain language of the Clean Air Act, sources of hazardous air pollutants previously classified as “major sources” may be reclassified as “area” sources (that is, any source of HAP emissions that is not a “major source”) when the facility limits its potential to emit below major source thresholds.

ICYMI

- ✦ **Senate Environment and Public Works Chairman Sen. John Barrasso (R-WY):** “The EPA’s decision today is consistent with President Trump’s agenda to keep America’s air clean and our economy growing,” Barrasso said. “Withdrawal of this policy means manufacturers, oil and gas operations, and other types of industrial facilities will have greater incentive to reduce emissions. Now these companies can help protect the environment without wasting time and money on unnecessary red tape.” ([The Washington Examiner](#), 1/25/18)
- ✦ **Senator Shelley Moore Capito, Chairman of the Senate Environment and Public Works Committee’s Clean Air and Nuclear Safety Subcommittee:** “Maintaining the

outdated and misguided ‘once-in-always-in’ policy just doesn’t make sense. Rather than reward facilities for doing the right thing and working to decrease emissions, it makes it harder for them to innovate and improve operations,” Senator Capito said. “By deciding to withdraw this counterproductive policy, Administrator Pruitt is once again proving that the Trump administration is committed to rolling back harmful regulations that do nothing but hold back companies and industries that are critical to our economy and already working to improve environmental quality.” ([Senator Shelley Moore Capito, 1/25/18](#))

March 13, 2018. Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program.

Link to memorandum [here](#)

Summary

- ✦ Provides EPA’s interpretation of the existing New Source Review regulations with respect to the accounting of emissions changes from a project under Step 1 of the NSR applicability process.
- ✦ Clarifies that the current NSR regulations already allow companies to consider projected decreases in emissions of air pollution, as well as projected emissions increases, during Step 1, rather than requiring that the source undergo time-consuming and potentially complicated “contemporaneous netting” under Step 2, in order to take account of those emissions decreases.

ICYMI

- ✦ **Ross Eisenberg, Vice President, National Association of Manufacturers:** “There is no good reason for the permitting process to create unnecessary obstacles for a manufacturer that wants to make efficiency upgrades or install modern pollution control equipment. In fact, manufacturers have been leaders in this space, working to successfully reduce emissions while adding to the overall economy. The NAM has made NSR a priority in its regulatory reform filings with the EPA and the White House. It’s clear that Administrator Pruitt agrees and is committed to fixing the permitting process for manufacturers.” ([National Association of Manufacturers, 3/13/18](#))
- ✦ **Howard Feldman, Senior Director of Regulatory and Scientific Affairs, American Petroleum Institute:** “EPA’s practical clarification to the language in the NSR regulations is a positive step that will help reduce uncertainty in the permitting process, while protecting public health,” said Feldman. “Balanced, effective NSR regulations allow our industry to invest in new facilities and energy infrastructure in ways that improve environmental performance.” ([American Petroleum Institute, 3/13/18](#))

April 30, 2018. Meadowbrook Energy and Keystone Landfill Common Control Analysis.

Link to analysis [here](#)

Summary

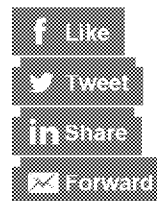
- While EPA’s longstanding practice and view that determinations of common control are fact-specific and should continue to be made by permitting authorities on a case-by-case bases, EPA believes it should realign its approach to common control determinations to minimize the potential for entities to be held responsible for decisions of other entities over which they have no power or authority.
- For reasons discussed at length in the analysis, EPA believes clarity and consistency can be restored to source determinations if the assessment of “control” for title V and NSR permitting purposes focuses on the power or authority of one entity to dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements.

Additional information on EPA’s New Source Review Permitting Program is available at: <https://www.epa.gov/nsr>

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